

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	

EUGENIA VI VENTURE HOLDINGS, LTD., Plaintiff, - against - MAPLEWOOD EQUITY PARTNERS, L.P., Defendant. -----	07 CIV 9417 (DAB)

NOTICE OF SETTLEMENT OF ORDER DISMISSING ACTION

WHEREAS, the Defendant has filed a Motion to Dismiss [DE 12] this action based on lack of subject-matter jurisdiction premised on lack of complete diversity; and

WHEREAS, by Scheduling Order dated January 25, 2008 (the "Scheduling Order"), the Court ordered Defendant to produce discovery evidencing lack of complete diversity of parties in this action; and

WHEREAS, the Scheduling Order further stated that if Defendant produces certain discovery demonstrating lack of jurisdiction on or before February 1, 2008, Plaintiff was ordered to submit a stipulation of discontinuance to Chambers 72 hours before the next conference scheduled for February 15, 2008 (*i.e.*, by February 12, 2008); and

WHEREAS, Defendant produced discovery demonstrating lack of jurisdiction three days early, by January 29, 2008, yet Plaintiff did not submit a stipulation of discontinuance prior to the 72-hour deadline set forth in the Scheduling Order (February 12, 2008); and

WHEREAS, by letter dated February 14, 2008 on the eve of the scheduled hearing, counsel for Plaintiff conceded that Defendant includes alien limited partners, and therefore lacks complete diversity; and

WHEREAS, Plaintiff did not submit a stipulation of discontinuance to the Court prior to the scheduled February 15, 2008 hearing; and

WHEREAS, Plaintiff still has not submitted a stipulation of discontinuance as of this date; and

WHEREAS, in the interest of judicial economy, Defendant is submitting this Notice of Settlement.

PLEASE TAKE NOTICE, that on February 27, 2008, defendant MapleWood Equity Partners, L.P., by its undersigned counsel, shall submit the attached Order Dismissing Action to the Honorable Deborah A. Batts, for signature.

PLEASE TAKE FURTHER NOTICE, that any objections or counter-order shall be served upon the undersigned on or before February 26, 2008.

Dated: New York, New York
February 21, 2008

STEVENS & LEE, P.C.

By: 

Chester B. Salomon (CS-2319)
485 Madison Avenue, 20th floor
New York, New York 10022-5803
(212)319-8500

and

AKERMAN SENTERFITT
One Southeast Third Avenue, 28th Floor
Miami, Florida 33131-1714
Attn: Brian P. Miller, Esq.
(305) 374-5600

Counsel for Defendant

To: Gibson, Dunn & Crutcher LLP
Counsel for Plaintiff
200 Park Avenue
New York, NY 10166-0193
Attn: Mitchell A. Karlan, Esq.
Richard Falek, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EUGENIA VI VENTURE HOLDINGS, LTD.,

Plaintiff,

07 CIV 9417 (DAB)

- against -

MAPLEWOOD EQUITY PARTNERS, L.P.,

Defendant.

ORDER DISMISSING ACTION

THIS CAUSE COMES BEFORE THE COURT on the Motion to Dismiss [DE 12] filed by defendant MapleWood Equity Partners, L.P., based on lack of subject-matter jurisdiction. Having reviewed the motion and related briefing, and pursuant to this Court's January 25, 2008 Scheduling Order (the "Scheduling Order") [DE 26], and being fully advised in the premises, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. This Court lacks subject-matter jurisdiction over this action. Plaintiff alleges that it is an alien corporation organized under the laws of the British Virgin Islands with a principal place of business in the Cayman Islands. Compl. ¶ 12 [DE 1]. Defendant is a limited partnership organized under the laws of Delaware. Id ¶ 13. For purposes of diversity of citizenship under 28 U.S.C. § 1332(a)(2), a limited partnership's citizenship is determined by reference to the citizenship of each of its partners. *See Herrick Co. v. SCS Communs., Inc.*, 251 F.3d 315, 322 (2d Cir. 2001). In this case, if one of Defendant's limited partners is an alien, this court lacks jurisdiction. *See Creaciones Con Idea, S.A. v. Mashreqbank PSC*, 75 F. Supp 2d 279, 281 (S.D.N.Y. 1999).

2. In its briefing on the Motion to Dismiss, Defendant has filed an Affidavit of Robert V. Glaser [DE 14] and a Reply Affidavit of Robert V. Glaser [DE 25]. Those affidavits establish that the Defendant partnership includes alien partners. Moreover, pursuant to the Scheduling Order, Defendant produced limited discovery to Plaintiff. By letter dated February 14, 2008, counsel for Plaintiff conceded that Defendant includes alien limited partners. However, Plaintiff has failed to dismiss this action as directed in the Scheduling Order within the timeframe set forth in the Scheduling Order.

3. Therefore, this Court hereby dismisses this action, without prejudice, for lack of subject matter jurisdiction.

Dated: New York, New York
February __, 2008

THE HONORABLE DEBORAH A. BATTS
UNITED STATES DISTRICT JUDGE